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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,943	04/01/2005	Masayo Matsumoto	123214	8052
25944 7590 10/14/2009 OLIFF & BERRIDGE, PLC P.O. BOX 320850 ALEXANDRIA, VA 22320-4850				
EXAMINER				
HOLCOMB, MARK				
ART UNIT		PAPER NUMBER		
3686				
MAIL DATE		DELIVERY MODE		
10/14/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/529,943

Applicant(s)

MATSUMOTO ET AL.

Examiner

MARK HOLCOMB

Art Unit

3686

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2005.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 24-31 is/are pending in the application.
4a) Of the above claim(s) none is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-11 and 24-31 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 01 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 25 August 2008
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Status of Claims

1. This action is in reply to the application filed on 1 April 2005, which claims priority to a PCT application filed 30 September 2003 and a foreign application with a filing date of 2 October 2002.
2. The amendment to the claims filed on 12 September 2005 have been received by this office. Claims 12-23 have been canceled. Claims 1-11 and 24-31 are currently pending and have been examined.

Claim Objections

3. **Claim 10** is objected to because of the following informalities: the improper use of grammar in the phrase *an total of time*. Appropriate correction is required.

Information Disclosure Statement

4. The information disclosure statement (IDS) submitted on 25 August 2008 has been considered by the Examiner.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

6. **Claims 10, 11, 27, 28 and 31** are rejected under 35 U.S.C. 102(a) as being anticipated by Teller et al. (U.S. Patent Number 6,605,038 B1), hereinafter Teller.

As per **claim 10**, Teller discloses a *data processing device connected with the measuring device for measuring activity of a subject for mutual communication, the data processing device processing the activity data transmitted from the measuring device* (see at least Teller, Fig. 1 and corresponding text), *the data processing device comprising:*

- *means for receiving the activity data transmitted from the measuring device* (see at least Teller, Fig. 1 and corresponding text),

- *and means for outputting a health management report including states of activity calculated from the received activity data (see at least Teller, Figures 5-11 and corresponding text),*
 - *wherein a period in which the received activity data was obtained is divided into a plurality of first determined periods, and wherein the health management report includes a graph displaying, for each first predetermined period, an total of time, the total of time having been obtained from the activity data for the case where intensity of activity was above a predetermined value during the first predetermined period, and the graph indicating the total of time within a plurality of first predetermined periods with a marker, the total of time having exceeded the predetermined total of time (see at least Teller, Figures 5-11 and corresponding text).*

As per **claim 11**, Teller discloses the system of claim 10, detailed above. Teller also discloses a device *further comprising*:

- *a display for displaying the health management report (see at least Teller, Figures 3 and 4 and corresponding text),*
- *means for selecting one of the totals of time displayed in the display (see at least Teller, Figures 3 and 4 and corresponding text),*
- *and means for displaying changes over time in the activity data in the display after one of the totals of time has been selected by using the selecting means, the activity data being*

obtained within the first determined period of the selected total of time (see at least Teller, Fig. 11 and corresponding text).

As per **claim 27**, Teller discloses the system of claim 10, detailed above. Teller also discloses a device

- *wherein a period in which the received activity data was obtained is divided into a plurality of second predetermined periods (see at least Teller, Fig. 11 and corresponding text),*
- *and wherein the health management report includes a graph displaying, for each second period, the energy consumption or the number of steps, these having been calculated from the activity data obtained within the second determined period and background colors of the graph differ on one side and the other side of the boundary, the boundary functioning a determined value set for the energy consumption or the number of steps (see at least Teller, Fig. 11 and corresponding text).*

As per **claim 28**, Teller discloses the system of claim 27, detailed above. Teller also discloses a device

- *wherein a period in which the received activity data was obtained is divided into a plurality of third predetermined periods (see at least Teller, Fig. 7 and corresponding text),*
- *and wherein the health management report includes a graph displaying, for each third*

predetermined period, changes over time in the activity data, and a graph displaying an total of time for each state of exercise, these total of time having been obtained by dividing the activity data obtained within the third predetermined periods into a plurality of states of exercise, these states of exercise having been set earlier to correspond to intensity of activity (see at least Teller, Fig. 7 and corresponding text).

As per **claim 31**, Teller discloses the system of claim 10, detailed above. Teller also discloses a device *further comprising*:

- *means for accumulating and storing the received activity data (see at least Teller, Figures 3 and 4 and corresponding text),*
- *means for inputting a period wherein state of activity of the subject is evaluated (see at least Teller, Figures 3 and 4 and corresponding text),*
- *and means for calculating the state of activity of the subject from the activity data stored in the storing means (see at least Teller, Figures 3 and 4 and corresponding text),*
 - *these activity data having been obtained within the input evaluating period, wherein calendar data is inserted at a predetermined time into the activity data received by the receiving means (see at least Teller, Fig. 11 and corresponding text),*
 - *and wherein the calculating means specifies activity data occurring within the input evaluating period out of the activity data stored in the storing means, this specification being performed on the basis of the calendar data inserted into the*

activity data, and the calculating means calculates the state of activity from the specified activity data (see at least Teller, Fig. 11 and corresponding text).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. This application currently names joint inventors. In considering patentability of the

claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. **Claims 1-6 and 8** are rejected under 35 U.S.C. 103(a) as being unpatentable over Teller in view of Trusheim, et al. (U.S. Patent Number 6,385,589 B1), hereinafter Trusheim.

As per **claim 1**, Teller discloses a *health management system comprising:*

- *a measuring device carried by a subject, the measuring device measuring activity of the subject (see at least Teller, Fig. 2 and corresponding text),*
- *a medical examination result database for storing medical examination result data history of the subject (see at least the network storage modules of Teller, Fig. 4 #100 and #120 and corresponding text, and the stored user information in Teller, Col. 12, line 51 to Col. 13, line 30),*
- *and a data processing device connected with the measuring device for mutual communication, the data processing device processing activity data obtained by the measuring device (see at least Teller, Figures 3 and 4 and corresponding text),*

- *wherein the measuring device comprises*
 - *means for measuring movement of the subject* (see at least Teller, Table 1 in Columns 4 and 5),
 - *means for storing the activity data showing intensity of activity of the subject, the intensity of activity having been determined from the measured movement of the subject* (see at least Teller, Fig.2 #22 and corresponding text and Table 2 in Columns 5 and 6),
 - *means for storing identification information specifying the subject* (see at least Teller, Fig.2 #22),
 - *and means for transmitting the activity data stored in the activity data storing means and the identification information stored in the identification information storing means to the data processing device* (see at least Teller, Fig. 1 #50 and corresponding text),
- *wherein the medical examination result database is connected with the data processing device for mutual communication* (see at least the network storage modules of Teller, Fig. 4 #100 and #120 and corresponding text),
 - *and stores the medical examination result data history of the subject which is correlated with the identification information of the subject* (see at least the stored user information in Teller, Col. 12, line 51 to Col. 13, line 30),
- *and wherein the data processing device comprises*
 - *means for receiving the activity data and the identification information*

transmitted from the transmitting means of the measuring device (see at least Teller, Fig. 1 #55 and corresponding text),

- *and means for outputting a health management report, the health management report having been produced* (see at least Teller, Figures 5 through 11 and corresponding text)
 - *on the basis of the received activity data* (see at least Teller, Col. 13, lines 30-46)
 - *and on the basis of the medical examination result data history extracted from the medical examination result database ...* (see at least Teller, Col. 13, lines 30-46).

Teller fails to explicitly disclose, but Trusheim succeeds in disclosing, reporting based on *medical examination result data history having been correlated with the received identification information* (see at least Trusheim, Fig. 23 and corresponding text). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Teller with Trusheim's system for monitoring and managing the health care of a patient population because to do so would result in a system for monitoring health, wellness and fitness that prevented "improper utilization of resources" that "may occur when a patient ignores serious symptoms of disease and, as a result, fails to seek care" (Trusheim, Col. 2, lines 23-25).

As per **claim 2**, Teller/Trusheim disclose the system of claim 1, detailed above. Teller also

discloses a system *wherein the transmitting means of the measuring device transmits the activity data which has been stored within a predetermined period* (see at least Teller, Col. 7, lines 1-19), *and wherein the health management report output by the data processing device includes states of activity within the predetermined period, these states of activity having been calculated from the activity data, and the medical examination result data from before and after the predetermined period* (see at least Teller, Figures 5-11 and corresponding text).

As per **claim 3**, Teller/Trusheim disclose the system of claim 2, detailed above. Teller also discloses a system *wherein the medical examination result database stores weight data of the subject* (see at least Teller, Col. 13, line 12), *and wherein the medical examination result data, which are shown on the health management report output by the data processing device, includes the weight data from before and after the predetermined period* (see at least Teller, Col. 19, lines 54-57).

As per **claim 4**, Teller/Trusheim disclose the system of claim 3, detailed above. Teller also discloses a system *wherein the medical examination result database further stores height data of the subject* (see at least Teller, Col. 13, line 12), *and wherein the health management report output by the data processing device further includes a graph of weight and height, one of these weight and height being on a vertical axis and the other on a horizontal axis, the graph showing a boundary between an upper limit and a lower limit of normal weight range, the range having been set on the basis of the height data of the subject, and the graph also showing the weight*

data from before and after the predetermined period (see at least Teller, Col. 19, lines 54-57).

As per **claim 5**, Teller/Trusheim disclose the system of claim 1, detailed above. Teller fails to disclose, but Trusheim succeeds in disclosing a system

- *wherein the identification information, which is stored in the identification information storing means of the measuring device, includes the information for specifying a group to which the subject belongs* (see at least Trusheim, Figures 4-6 and corresponding text),
- *wherein the medical examination result database stores the medical examination result data history of each subject belonging to the group* (see at least Trusheim, Figures 9 and 10 and corresponding text),
- *and wherein the health management report output by the data processing device includes an average value of the medical examination result data of the group which is specified from the identification information* (see at least Trusheim, Col. 24, lines 53-67).

As per **claim 6**, Teller/Trusheim disclose the system of claim 1, detailed above. Teller also discloses a system

- *wherein the data processing device further comprises*
 - *means for inputting the identification information for specifying the subject* (see at least Teller, Figures 3 and 4 and corresponding text),
 - *and means for transmitting the input identification information to the measuring device* (see at least Teller, Col. 9, lines 27-41),

- *and wherein the measuring device further comprises*
 - *means for receiving the transmitted identification information (see at least Teller, Col. 9, lines 27-41),*
 - *and means for replacing the identification information, which is stored in the identification information storing means, with the received identification information (see at least Teller, Fig. 2 and corresponding text),*

As per **claim 8**, Teller/Trusheim disclose the system of claim 1, detailed above. Teller also discloses a system

- *wherein the measuring device further comprises a first timer and means for producing a calendar date based on the time kept by the first timer (see at least Teller, Col. 7, lines 1-37),*
- *wherein the data processing device further comprises*
 - *a second timer, means for producing calendar data for correction, the calendar data being based on the time kept by the second timer (see at least Teller, Fig. 6 and corresponding text),*
 - *and means for transmitting the calendar data for correction to the measuring device (see at least Teller, Col. 9, lines 27-41),*
- *and wherein the measuring device further comprises means for receiving the calendar data for correction (see at least Teller, Col. 9, lines 27-41),*
 - *and means for correcting the first timer on the basis of the received calendar data*

for correction (see at least Teller, Col. 9, lines 27-41).

11. **Claims 24-26, 29 and 30** are rejected under 35 U.S.C. 103(a) as being unpatentable over Teller in view of Ohlenbusch, et al. (U.S. Patent Number 6,493,652 B1), hereinafter Ohlenbusch.

As per **claim 24**, Teller discloses a *measuring device carried by a subject and measuring activity of the subject, comprising:*

- *means for measuring movement of the subject* (see at least Teller, Fig. 2 and corresponding text),
- *means for storing activity data* (see at least Teller, Fig. 2 and corresponding text),
 - *the activity data showing intensity of activity of the subject,*
 - *the intensity of activity having been determined from the measured movement of the subject* (see at least Teller, Columns 4-6),
- *means for producing display data for displaying changes over time in the activity data stored in the activity data storing means* (see at least Teller, Fig. 2 and corresponding text),
- *and a display for displaying the changes over time in the activity data based on the display data* (see at least Teller, Col. 9, lines 14-26),
 - *wherein, in the display, a predetermined threshold value which has been set for intensity of activity functions as a boundary* (see at least Teller, Col. 9, lines 14-

26),

Teller fails to explicitly disclose, but Ohlenbusch succeeds in disclosing a device that has *a background color in the case where the intensity of activity is below the threshold value differs from a background color in the case where the intensity of activity exceeds the threshold value* (see at least Ohlenbusch, Figures 32A-32H and corresponding text). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Teller with the device for monitoring activity of a user in locomotion on foot of Ohlenbusch, because to do so would result in a system for monitoring health, wellness and fitness that "can be used across different training regimes" (Ohlenbusch, Col. 1, lines 60-61).

As per **claim 25**, Teller/Ohlenbusch discloses the device of claim 24, detailed above. Teller further discloses a device *wherein, in the display, the background color in the case where the intensity of activity is below the threshold value is the same color as the background color in the case where the intensity of activity exceeds the threshold value, but the background color is lighter and darker shades of the same color* (see at least Teller, Col. 9, lines 14-26).

As per **claim 26**, Teller/Ohlenbusch discloses the device of claim 25, detailed above. Teller further discloses a device

- *wherein the measuring device comprises means for inputting a beginning point of the display of changes over time in the activity data* (see at least Teller, Fig. 18 #470 and corresponding text),

- *wherein, in the display, the changes over time in the activity data within a predetermined period are displayed from this input beginning point* (see at least Teller, Col. 9, lines 14-26).

As per **claim 29**, Teller discloses the system of claim 28, detailed above. Teller also discloses a device

- *wherein a period in which the received activity data was obtained is divided into a plurality of fourth predetermined periods* (see at least Teller, Fig. 11 and corresponding text),

Teller fails to explicitly disclose, but Ohlenbusch succeeds in disclosing a device

- *wherein the health management report includes a plot graph having plotted thereon one of 'either period of exercise or number of steps' and energy consumption, these having been calculated from the activity data of the fourth predetermined period* (see at least Ohlenbusch, Figures 13, 19 and 33-37, and corresponding text),
- *and one of 'either period of exercise or number of steps' and the energy consumption being on a vertical axis and the other on a horizontal axis* (see at least Ohlenbusch, Figures 13, 19 and 33-37, and corresponding text).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Teller with the device for monitoring activity of a user in locomotion on foot of Ohlenbusch, because to do so would result in a system for monitoring health, wellness and fitness that "can be used across different training regimes" (Ohlenbusch, Col. 1, lines 60-61).

As per **claim 30**, Teller discloses the system of claim 10, detailed above. Teller also discloses a device *further comprising means for deleting certain activity data from the received activity data, and for calculating a state of activity* (see at least Teller, Figures 3 and 4 and corresponding text). Teller fails to explicitly disclose, but Ohlenbusch succeeds in disclosing a device wherein *the deleted activity data being: activity data wherein intensity of activity is outside a predetermined threshold range and is continued longer than a predetermined period, or activity data wherein a number of steps within a predetermined period is outside a predetermined threshold range, this number of steps having been calculated from the activity data* (see at least Ohlenbusch, Figures 7 and 8 and corresponding text). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Teller with the device for monitoring activity of a user in locomotion on foot of Ohlenbusch, because to do so would result in a system for monitoring health, wellness and fitness that "can be used across different training regimes" (Ohlenbusch, Col. 1, lines 60-61).

12. **Claims 7 and 9** are rejected under 35 U.S.C. 103(a) as being unpatentable over Teller in view of Trusheim, further in view of Ohlenbusch.

As per **claim 7**, Teller/Trusheim disclose the system of claim 6, detailed above. Teller fails to disclose, but Ohlenbusch succeeds in disclosing *wherein the identification information, which is*

stored in the identification information storing means of the measuring device, is replaced with the received identification information only when the identification information receiving means has received this identification information from the data processing device (see at least Ohlenbusch, Fig. 14 and corresponding text). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Teller/Trusheim with the device for monitoring activity of a user in locomotion on foot of Ohlenbusch, because to do so would result in a system for monitoring health, wellness and fitness that "can be used across different training regimes" (Ohlenbusch, Col. 1, lines 60-61).

As per **claim 9**, Teller/Trusheim disclose the system of claim 8, detailed above. Teller also discloses a system *wherein the measuring device further comprises*

- *means for inserting calendar data, which have been produced within each first predetermined period, into the activity data, the activity data being produced within each second predetermined period and being stored in the activity data storing means* (see at least Teller, Fig. 2 and corresponding text),
- *and means for correcting the activity data stored in the activity data storing means* (see at least Teller, Fig. 2 and corresponding text),

With regard to the limitation *means for correcting the activity data*, Teller fails to explicitly disclose, but Ohlenbusch succeeds in disclosing *the activity data correcting means being performed on the basis of a period for producing activity data, the period being specified from*

the calendar data inserted into the activity data, (see at least Ohlenbusch, Figures 10-13 and corresponding text).

Teller also fails to explicitly disclose, but Ohlenbusch succeeds in disclosing *wherein the activity data correcting means performs the following:*

- ~~(1)~~ *in the case where a plurality of items of activity data are stored from overlapping periods for producing activity data, any one of these plurality of items of activity data is retained and the other items are deleted, (see at least Ohlenbusch, Figures 14-19 and corresponding text).*
- ~~(2)~~ *and in the case where the activity data has a blank period in which no activity data has been produced, dummy data is inserted into the blank period (see at least Ohlenbusch, Figures 14-19 and corresponding text).*

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Teller/Trusheim with the device for monitoring activity of a user in locomotion on foot of Ohlenbusch, because to do so would result in a system for monitoring health, wellness and fitness that "can be used across different training regimes" (Ohlenbusch, Col. 1, lines 60-61).

Conclusion

13. The cited but not referenced prior art that Examiner considers pertinent to this invention includes a device for measuring calorie expenditure and body temperature (Amano, U.S. Patent Number 6,287,262 B1).

14. Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the Examiner should be directed to **Mark Holcomb**, whose telephone number is **571.270.1382**. The Examiner can normally be reached on Monday-Friday, 9:30am-5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, **Jerry O'Connor**, can be reached at **571.272.6787**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866.217.9197** (toll-free).

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Art Unit 3686

/Gerald J. O'Connor/
Supervisory Patent Examiner
Group Art Unit 3686